

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

KAPLAN, et al.,

Plaintiffs,

Civ. No. 09-646 (RWR)

v.

HEZBOLLAH et al.,

Defendants.

PLAINTIFFS' MOTION FOR AN ORDER PURSUANT TO FED.R.CIV.P. 4(f)(3)

For the reasons set forth in the memorandum attached hereto the plaintiffs respectfully move for an ORDER:

- 1) Granting plaintiffs leave pursuant to Fed.R.Civ.P. 4(f)(3) to serve defendant Hezbollah via international courier delivery to Hezbollah's television station, Al Manar; and
- 2) Granting any other relief the Court finds just, necessary or appropriate.

Plaintiffs, by their attorneys,

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**MEMORANDUM IN SUPPORT OF PLAINTIFFS'
MOTION FOR AN ORDER PURSUANT TO FED.R.CIV.P. 4(f)(3)**

I. Relevant Background

This is a civil action under the Antiterrorism Act (“ATA”), 18 U.S.C. § 2333, and the Foreign Sovereign Immunities Act (“FSIA”), 28 U.S.C. § 1602 *et seq.*, on behalf of American citizens injured as the result of rockets fired by the Hezbollah terrorist organization with the aid and support of the Democratic People’s Republic of Korea (hereinafter “North Korea”).

The named defendants in this action are Hezbollah and North Korea.

North Korea has defaulted this action and plaintiffs have moved for entry of default judgment against North Korea. *See* dkt. # 21.

Unfortunately, however, plaintiffs have not yet been able to complete service on Hezbollah. Plaintiffs initially sought to serve Hezbollah by serving Mohammed Fneish, a senior Hezbollah official who also serves as a minister in the Lebanese government, by DHL.

The DHL delivery to Fneish was successful, and plaintiffs filed a motion explaining Fneish’s position in Hezbollah (supported by an expert declaration) and requesting an order

approving the service on Fneish *nunc pro tunc* as valid service on Hezbollah pursuant to Fed.R.Civ.P. 4(f)(3). *See* dkt. # 16.

The Court granted plaintiffs' Fneish motion in part and ordered, *sua sponte*, that in addition to the service on Fneish plaintiffs must also publish notice of this action "in the three Lebanese newspapers with the largest national circulation twice per week in each newspaper on a staggered schedule to cover six days each week for a period of four weeks." Dkt. # 19.

However, as detailed in plaintiffs' "Response to the Court's Order to Show Cause" being filed contemporaneously herewith, publishing notice of this action in Lebanese newspapers proved to be impossible.

Accordingly, plaintiffs now move for leave to serve Hezbollah by alternative means, specifically: by service on Hezbollah's television station, Al Manar.

II. Plaintiffs Should Be Permitted to Complete Service by Serving Hezbollah's Television Station, Al Manar, by DHL or Federal Express

While the location of Hezbollah's terrorist leadership and facilities are not publicly known, Hezbollah also conducts political and propaganda activities quite openly.

Hezbollah's propaganda activities are carried out, *inter alia*, through Hezbollah's own television station, "Al Manar."

Al Manar's role as Hezbollah's own television station is described in an affidavit executed by Charles Villani, an investigator in the office of the U.S. Attorney for the Southern District of New York, which was submitted to the U.S. District Court for the Southern District of New York in the matter of *U.S. v. Iqbal*, 06-cr-01054-RMB (S.D.N.Y.). Exhibit A at ¶¶ 4, 5, 13.

Additionally, the indictment filed in *Iqbal*, which charged the defendants with illegally providing services to Hezbollah by re-broadcasting Al Manar programs, repeatedly confirms that Al Manar is Hezbollah's television station. *See* Exhibit B at ¶¶ at 2, 9, 12, 15, 24, 26, 29, 32.

Thus, the U.S. Executive Branch has expressly confirmed that Al Manar is Hezbollah's television station, and serves as the televised propaganda arm of Hezbollah.

Indeed, the Government has charged persons who re-broadcast Al Manar programs with providing material support to Hezbollah *itself*. Exhibit B. In other words, the Government views Al Manar as part and parcel of Hezbollah itself.

Given Al Manar's role as Hezbollah's own television station it is more than reasonable to assume that legal process addressed to Hezbollah and delivered to Al Manar's offices will reach the appropriate officials in Hezbollah. Indeed, in light of the position of the U.S. Executive Branch that provision of material support to Al Manar constitutes provision of material support to Hezbollah *itself*, it would also be appropriate to conclude that service of process on Al Manar's offices constitutes service of process on Hezbollah *itself*.

In sum, from any perspective, service on Hezbollah via courier delivery to Al Manar's offices in Beirut is an appropriate and legitimate means of alternative service under Rule 4(f)(3).

WHEREFORE, the instant motion should be granted.

Plaintiffs, by their attorneys,

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